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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 2

In re Ronald P., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. Ronald P., Defendant and Appellant.	A143335 (Solano County Super. Ct. No. J-42326)

INTRODUCTION

Defendant Ronald P., a 15-year-old ward of the juvenile court, was riding with three adult companions in a white Pontiac. Two Vallejo police officers on patrol pulled the Pontiac over because it had no rear license plate. The officers smelled the odor of marijuana and observed a marijuana cigarette in the center console of the car. After the driver told the officers that there was marijuana in the car, the officers decided to search the vehicle and placed the occupants—including defendant—in handcuffs. One of the officers did a pat-down search of defendant and found a loaded .40 caliber firearm in his front waistband. The district attorney filed a wardship petition charging defendant with possession of a firearm and possession of live ammunition by a minor. Following a

contested jurisdictional hearing pursuant to Welfare and Institutions Code section 602, the court found the allegations true.[1]

On appeal, defendant raises three issues. First, he contends that the juvenile court erred in denying his motion to suppress the firearm as the result of an unconstitutional search. Second, he argues that the juvenile court abused its discretion in choosing to have defendant's case proceed as a delinquency proceeding under section 602 as opposed to a dependency proceeding under section 300. Finally, he contends that the probation condition requiring him to "maintain acceptable grades, behavior and attendance" is unconstitutionally vague.

We find the juvenile court did not abuse its discretion in deciding to have defendant's case proceed as a delinquency matter and did not err in denying the motion to suppress. We agree, however, that the challenged probation condition is unconstitutionally vague and will modify it.

FACTUAL AND PROCEDURAL BACKGROUND

On August 24, 2014, defendant was riding in a white Pontiac car with three adult companions. Vallejo Police Officer David McLaughlin and his partner saw the car and, after noting that it did not have a rear license plate, initiated a traffic stop. The driver failed to stop the car immediately despite passing multiple safe locations to pull over. The officers activated their lights and sirens, at which point the vehicle pulled over. As the officers approached the vehicle, they smelled the odor of marijuana and saw a marijuana "blunt' in the center console of the car. The driver admitted that there was marijuana in the vehicle, but asserted he had a "card."

The officers decided to search the vehicle and, pursuant to Vallejo Police Department policy, individually handcuffed the four occupants while they were seated in the vehicle. The officers then told the occupants to step out of the car. While defendant was stepping out of the front passenger seat, Officer McLaughlin conducted a pat down

[1] All statutory references are to the Welfare and Institutions Code unless otherwise noted.

search of defendant. Officer McLaughlin felt the butt of what turned out to be a loaded Smith & Wesson .40 caliber semi-automatic handgun in defendant's front right waistband. Defendant told Officer McLaughlin "[t]hat's my 40."

On August 26, 2014, the Solano County District Attorney filed a juvenile wardship petition against defendant pursuant to section 602, subdivision (a). The petition charged defendant with possession of a firearm by a minor in violation of Penal Code section 29610 and possession of live ammunition by a minor in violation of Penal Code section 29650.

At arraignment, defendant's counsel requested that a joint assessment report be prepared pursuant to section 241.1 to determine whether the case should proceed as a juvenile delinquency or a juvenile dependency matter, and the court granted the request. On September 17, 2014, the Probation Department and the Child Welfare Services Division filed their Agreed Joint Assessment Report (Joint Assessment Report). The report contained an extensive discussion of defendant's family situation, including his mother's numerous neglect referrals, the conflict between his mother and the great-aunt with whom defendant had lived for most of his life, and his mother's struggle with maintaining stable housing. The report also noted that defendant avoided the enforcement of rules or discipline in the homes of his various family members simply by leaving and going to stay at another family member's home. Ultimately, the agencies recommended that defendant's case proceed as a delinquency action under section 602 rather than as a dependency action under section 300. After a hearing on September 17, 2014, the juvenile court agreed with the joint assessment and decided that the case would proceed as a delinquency action "given the nature of [the] offense and [defendant's] ability to play one family member off against another."

At a combined suppression/jurisdiction hearing, defendant moved to suppress the gun, arguing that Officer McLaughlin's search of defendant violated the Fourth Amendment. Officer McLaughlin testified at the suppression hearing as to his safety concerns during the traffic stop: "[E]very traffic stop is inherently dangerous. When there's marijuana inside of a vehicle, to me it ups the danger because people, from my

experience, involved with narcotics or marijuana are sometimes armed with firearms." The juvenile court denied defendant's motion to suppress. It found Officer McLaughlin credible and stated that the two officers were confronting a "car full of people and drugs were present." The court concluded that "given the fact that drugs were present, . . . it raised a significant concern as to officer safety, making the pat-search reasonable under the circumstances." In the alternative, the court held that because defendant was on probation[2] and had a probationary search condition, the discovery of the gun could be justified under the doctrine of inevitable discovery.

At the jurisdiction hearing the juvenile court sustained both counts of the petition. At the subsequent disposition hearing, the juvenile court committed defendant to Solano County Juvenile Hall for 130 days with credit for time served and placed him on probation. Defendant's conditions of probation include the requirement that he "[a]ttend school regularly and maintain acceptable grades, behavior and attendance."

DISCUSSION

A. Defendant's Motion to Suppress

1. *Standard of Review*

"The standard of review of a trial court's ruling on a motion to suppress is well established and is equally applicable to juvenile court proceedings. ' "On appeal from the denial of a suppression motion, the court reviews the evidence in a light favorable to the trial court's ruling." ' " (*In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236, quoting *In re William V.* (2003) 111 Cal.App.4th 1464, 1468.) We defer to the trial court's factual findings, express or implied, when supported by substantial evidence. (*People v. Superior Court* (2012) 204 Cal.App.4th 1004, 1011.) We then exercise our independent judgment in applying the law to the factual findings to determine whether the factual record supports the trial court's conclusions. (*People v. Rogers* (2009) 46 Cal.4th 1136, 1157.)

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[2] Defendant had previously been adjudicated a ward of the juvenile court and placed on probation after he admitted to felony battery.

2. *Analysis*

Defendant contends that the juvenile court erred in denying his motion to suppress. Defendant does not contest the validity of the underlying traffic stop or the officers' decision to remove him from the vehicle. Instead, he makes two arguments. First, he argues that Officer McLaughlin's use of handcuffs transformed the initial detention into a de facto arrest that had to be supported by probable cause.[3] In the alternative, he contends that even if there was no de facto arrest, the pat-down search of defendant was unconstitutional because the officer lacked reasonable suspicion to believe that defendant was armed and dangerous. We address each contention in turn.

a. *De Facto Arrest*

" 'Detentions' " for Fourth Amendment purposes are seizures of an individual which are "strictly limited in duration, scope and purpose" and which "may be undertaken by police 'if there is an articulable suspicion that a person has committed or is about to commit a crime.' " (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784, quoting *Florida v. Royer* (1983) 460 U.S. 491, 498.) However, "courts have long recognized that an investigative detention may, at some point, become so overly intrusive that it can no longer be characterized as a minimal intrusion designed to confirm quickly or dispel the suspicions which justified the initial stop. [Citation.] When the detention exceeds the boundaries of a permissible investigative stop, the detention becomes a de facto arrest requiring probable cause." (*In re Carlos M.* (1990) 220 Cal.App.3d 372, 384.)

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[3] The Attorney General contends that defendant has forfeited this argument because his motion to suppress failed to mention "de facto" arrests or cite relevant case law. We disagree. Defendant's motion to suppress included a section entitled "Illegal Arrest" which cited case law for the proposition that a detention may be converted to an arrest. In moving to suppress, a defendant "must specify the precise grounds for a motion to suppress," but "need only be specific enough to give the prosecution and the court reasonable notice." (*People v. Williams* (1999) 20 Cal.4th 119, 131, 136). While defendant's trial counsel failed to highlight the use of handcuffs specifically, or address this argument at the suppression hearing, we conclude that the motion to suppress itself gave reasonable notice to the prosecution and court.

There is no " 'hard and fast line to distinguish permissible investigative detentions from impermissible de facto arrests. Instead the issue is decided on the facts of each case, with focus on whether the police diligently pursued a means of investigation reasonably designed to dispel or confirm their suspicions quickly, using the least intrusive means reasonably available under the circumstances.' " (*People v. Celis* (2004) 33 Cal.4th 667, 674-675, quoting *In re Carlos M., supra*, 220 Cal.App.3d at pp. 384-385.) Accordingly, an officer's use of handcuffs "for a short period does not *necessarily* transform a detention into an arrest." (*In re Antonio B.* (2008) 166 Cal.App.4th 435, 441.) At the same time, " 'handcuffing substantially aggravates the intrusiveness' " of a detention. (*Meredith v. Erath* (9th Cir. 2003) 342 F.3d 1057, 1062, quoting *Washington v. Lambert* (9th Cir. 1996) 98 F.3d 1181, 1188.) In determining whether the use of handcuffs transforms a detention into an arrest, the critical inquiry is whether the use of handcuffs "was reasonably necessary under all of the circumstances of the detention." (*In re Antonio B., supra*, 166 Cal.App.4th at p. 441.) "Circumstances in which handcuffing has been determined to be reasonably necessary for the detention include when: (1) the suspect is uncooperative; (2) the officer has information the suspect is currently armed; (3) the officer has information the suspect is about to commit a violent crime; (4) the detention closely follows a violent crime by a person matching the suspect's description and/or vehicle; (5) the suspect acts in a manner raising a reasonable possibility of danger or flight; or (6) the suspects outnumber the officers." (*People v. Stier* (2008) 168 Cal.App.4th 21, 27-28.)

We hold that Officer McLaughlin's use of handcuffs on defendant did not transform the detention into a de facto arrest. First, Officer McLaughlin testified that after initiating the traffic stop, the car in which defendant was a passenger did not immediately pull over despite the fact that the car passed multiple safe areas to pull over. He further testified that the presence of marijuana in the car raised the danger posed by the traffic stop "because people, from [his experience], involved with narcotics or marijuana are sometimes armed with firearms." Accordingly, there was a reasonable basis for believing the individuals in the car could flee or be armed. Second, Officer

McLaughlin and his partner were outnumbered by four individuals who were occupying a car which the driver admitted contained drugs. We cannot say on this record that having made the decision to search the vehicle for contraband, the outnumbered officers acted unreasonably in temporarily handcuffing the occupants to secure the officers' safety during the search. (*People v. Stier*, *supra*, 168 Cal.App.4th at pp. 27-28 ["Circumstances in which handcuffing has been determined to be reasonably necessary for the detention include when . . . the suspects outnumber the officers."]; see *Terry v. Ohio* (1968) 392 U.S. 1, 23 ["Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties."].)

b. *The Pat Down Search*

Defendant next argues that even if there was no de facto arrest, Officer McLaughlin's pat down search violated the Fourth Amendment because it was not supported by reasonable suspicion that defendant was armed. "In the context of an ordinary traffic stop, an officer may not pat down a driver and passengers absent a reasonable suspicion they may be armed and dangerous." (*People v. Collier* (2008) 166 Cal.App.4th 1374, 1377 (*Collier*), citing *Knowles v. Iowa* (1998) 525 U.S. 113, 118.) An officer need not be "absolutely certain that the individual is armed; the crux of the issue is whether a reasonably prudent person in the totality of the circumstances would be warranted in the belief that his or her safety was in danger." (*People v. Avila* (1997) 58 Cal.App.4th 1069, 1074.)

The facts of *Collier* are instructive. In that case, two sheriffs deputies lawfully stopped a car one afternoon because it did not have a front license plate. As each deputy approached the car, they smelled marijuana emanating from the driver's and passenger's side. The deputies asked the defendant passenger to get out of the car and observed that he was wearing baggy clothing that might conceal a weapon. The deputies conducted a pat down search and found a loaded handgun and PCP in the passenger's front pocket. The *Collier* court wrote that in " 'connection with a lawful traffic stop of an automobile, when the officer has a reasonable suspicion that illegal drugs are in the vehicle, the officer may, in the absence of factors allaying his safety concerns, order the occupants

out of the vehicle and pat them down briefly for weapons to ensure the officer's safety and the safety of others.' " (*Collier, supra,* 166 Cal.App.4th at p. 1378, quoting *United States v. Sakyi* (4th Cir. 1998) 160 F.3d 164, 169 (*Sakyi*).) Although the defendant argued in *Collier* that the search was unreasonable because the driver had made no "furtive gestures," there was no "gang evidence," and the traffic stop did not occur in a high crime area, the court concluded that the "pat-down was reasonably necessary because the officers had probable cause to search the car interior and had decided to do so." (*Id.* at p. 1378.) On these facts, the court in *Collier* concluded that "this was no ordinary traffic stop" and affirmed the denial of the defendant's motion to suppress. (*Id.* at p. 1377.)

Defendant seeks to distinguish *Collier* on the ground that, unlike the passenger in that case, there was no evidence that he was wearing "baggy clothing" and Officer McLaughlin had no reason to believe he was armed. We disagree. This case, like *Collier*, was no ordinary traffic stop and Officer McLaughlin had a reasonable basis for suspecting the presence of weapons. As discussed, the vehicle in which defendant was a passenger failed to immediately pull over when the officers initiated the traffic stop. The officers not only smelled marijuana, they saw it in the center console and the driver admitted there was "weed" in the car. When Officer McLaughlin and his partner decided to search the vehicle, they removed the four occupants from the vehicle. Based on the marijuana odor and presence of the marijuana cigarette, the officers had reason to believe that some, if not all, of the occupants either possessed or had recently used marijuana. As numerous courts have recognized, " 'guns often accompany drugs.' " (*Collier, supra,* 166 Cal.App.4th at p. 1378, quoting *Sakyi, supra,* 160 F.3d at p. 169; see also *People v. Bradford* (1995) 38 Cal.App.4th 1733, 1739 ["[I]t is common knowledge that perpetrators of narcotics offenses keep weapons available to guard their contraband."]) Officer McLaughlin expressed this concern for his safety in his testimony at the suppression hearing. Finally, the officers were outnumbered two to four.

We find no significance in defendant's argument that the record contains no evidence that he was wearing "baggy clothing." The size and clothing of an individual

are merely factors to be considered in the totality of the circumstances in deciding whether an officer had a reasonable basis for suspecting the presence of weapons.[4] Given the vehicle's initial evasive behavior and the presence of drugs, we conclude that Officer McLaughlin's pat-down search was sufficiently justified by concerns for officer safety. (See *Collier*, *supra*, 166 Cal.App.4th at p. 1378, quoting *People v. Dickey* (1994) 21 Cal.App.4th 952, 957 [" 'The judiciary should not lightly second guess a police officer's decision to perform a pat-down search for officer safety. The lives and safety of police officers weigh heavily in the balance of competing Fourth Amendment considerations.' "].)

The juvenile court did not err in denying defendant's motion to suppress.[5]

B. The Juvenile Court's Section 241.1 Determination

1. *Statutory Framework and Standard of Review*

"A child who has been abused or neglected falls within the juvenile court's protective jurisdiction under section 300 as a 'dependent' child of the court. In contrast, a juvenile court may take jurisdiction over a minor as a 'ward' of the court under section 602 when the child engages in criminal behavior." (*In re M.V.* (2014) 225 Cal.App.4th

[4] Defendant relies on dicta in *Collier* that "[h]ad appellant been wearing nonbaggy clothing, we doubt that Deputy Binder would have entertained a suspicion that appellant might be armed." (*Collier*, *supra*, 166 Cal.App.4th at p. 1378, fn.1.) Placed in context, this statement appears to have been intended to explain why the officer searched the passenger (who was wearing baggy clothing) but not the female driver (who was not wearing baggy clothing). We do not read this statement as suggesting pat down searches are only acceptable where a suspect is wearing baggy clothing. Finally, we note that it may be inferred on this record that defendant was wearing clothing that was sufficiently loose fitting to tuck a semiautomatic Smith & Wesson .40 caliber handgun in his waistband.

[5] In light of our holding, we need not address the juvenile court's and the Attorney General's alternative "inevitable discovery" argument based on defendant's probationary search condition. We note, however, that the Supreme Court has expressly held that a juvenile's probationary search condition may not be used to justify an otherwise illegal search unless the searching officer was aware of the search condition at the time he or she conducted the search. (*In re Jaime P.* (2006) 40 Cal.4th 128,132.) Inexplicably, the Attorney General does not cite or discuss *In re Jaime P.* despite the fact that this case was discussed in defendant's opening brief on appeal.

1495, 1505.) Generally, a child who qualifies as both a dependent and a ward of the juvenile court cannot be both. (*In re M.V.*, *supra*, 225 Cal.App.4th at p. 1505; see also § 241.1, subd. (d) ["this section shall not authorize the filing of a petition . . . to make a minor simultaneously both a dependent child and a ward of the court"].) Instead, section 241.1 sets forth the procedure that "the juvenile court must follow when faced with a case in which it may have dual bases for jurisdiction over a minor." (*In re M.V.*, *supra*, 225 Cal.App.4th at p. 1506.)

Under section 241.1, when it appears that a minor may fit the criteria for both dependency and wardship, "the county probation department and the child welfare services department shall . . . initially determine which status will serve the best interests of the minor and the protection of society." (§ 241.1, subd. (a).) Probation and child welfare services must provide their assessment in a joint assessment report which must, at a minimum, address eight statutory factors: (1) the nature of the referral; (2) the age of the minor; (3) the prior record of the minor's parents for child abuse; (4) the prior record of the minor for out-of-control or delinquent behavior; (5) the parent's cooperation with the minor's school; (6) the minor's functioning at school; (7) the nature of the minor's home environment; and (8) the record of other agencies that have been involved with the minor and his or her family. (§ 241.1, subd. (b).) California Rules of Court, rule 5.512 requires that the section 241.1 joint assessment be memorialized in writing and include four additional items: (1) the history of any physical, sexual, or emotional abuse of the child; (2) any services or community agencies available to assist the child and his or her family; (3) a statement by any counsel representing the minor; and (4) a statement by any Court Appointed Special Advocate. (Cal. Rules of Court, rule 5.512(d).) After the joint assessment report is filed with the juvenile court, "the court shall determine which status is appropriate for the minor." (§ 241.1, subd. (a); see also Cal. Rules of Court, rule 5.512(g) ["The court must make a determination regarding the appropriate status of the child and state its reasons on the record or in a written order."].)

"We review the juvenile court's determination under section 241.1 for abuse of discretion. [Citation.] 'To show abuse of discretion, the appellant must demonstrate the

juvenile court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice.' [Citation.] Throughout our analysis, we will not lightly substitute our decision for that rendered by the juvenile court. Rather, we must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings where there is substantial evidence to support them. [Citation.]" (*In re M.V.*, *supra*, 225 Cal.App.4th at pp. 1506-1507.)

2. *Analysis*

Defendant argues that the juvenile court abused its discretion in deciding to continue defendant as a ward of the court because the court relied on the Joint Assessment Report which contained erroneous information. He further contends that the interests of defendant and society would be best served if he were adjudicated a dependent child of the court so that his family can receive the services it needs. We reject the former argument and conclude that the juvenile court did not abuse its discretion.

Defendant points to two statements in the Joint Assessment Report as "erroneous." First, the Child Welfare Services Division (Child Welfare), in its "recommendation and assessment" section of the report, stated that "[t]he mother . . . has made prior arrangements for the minor to reside with [his great-aunt], thus there are currently no caretaker absence or incapacity issues to address by the Child Welfare Department." Defendant asserts this statement demonstrates that the Child Welfare recommendation was based on the erroneous assumption that defendant would be released to his great-aunt, and not his mother, which was ultimately not the case after the disposition hearing. Second, Child Welfare supported its recommendation that defendant be continued as a ward on the grounds that the "minor's needs can best be met by the Probation Department to provide him rehabilitation services in order to address his extensive delinquency history related to assault, robbery, battery and carrying a firearm." Defendant asserts that the characterization of his delinquency history as "extensive" is incorrect insofar as he had only a single prior incident in his delinquency history, the

prior admitted charge of felony battery. He argues this is not an "extensive delinquency history" and that he has no sustained robbery allegations.

Defendant's reliance on these two statements in the Joint Assessment Report is unavailing. The Joint Assessment Report elsewhere accurately and completely reported defendant's delinquency history; it described his prior adjudication as a ward of the court for felony battery (for which he was then on probation) as well as two informal citations for trespassing and receipt of stolen property.[6] There was no mistake about it at the hearing. Similarly, while Child Welfare included a statement reflecting its belief that defendant would eventually reside with his great-aunt, this was not the basis on which the juvenile court made its decision. The Joint Assessment Report provided an extensive (and unchallenged) account of the issues presented by defendant's family and living situation. It described defendant's mother's numerous referrals for alleged abuse or neglect (all of which were either "evaluated out" or deemed "unfounded"), her issues with providing a stable home and assisting in defendant's education, and the intra-family conflicts between defendant's mother and great aunt. The juvenile court witnessed this conflict firsthand when defendant's mother and great-aunt had a short verbal exchange during the 241.1 hearing. Further, at the section 241.1 hearing, the juvenile court expressly rebuffed defendant's attempt to have the case transferred to San Joaquin County for disposition on the ground that defendant's great-aunt lived there, which was further indication that the court was not basing its section 241.1 determination on an erroneous assumption that defendant would eventually reside with his great-aunt.

Accordingly, notwithstanding any characterization or assumption by Child Welfare, the juvenile court had accurate information regarding defendant's delinquency history and family situation to make its decision. Defendant has failed to demonstrate that the juvenile court was presented with, or relied upon, inaccurate or incomplete

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[6] It appears that the challenged reference in the assessment report to defendant having "robbery" in his history refers to the fact that defendant's first wardship petition filed on January 14, 2014, charged attempted second degree robbery, a charge that was subsequently dismissed pursuant to a plea agreement.

information. Accordingly, we reject defendant's contention that the Joint Assessment Report contained "erroneous information" that requires reversal.[7]

Finally, defendant generally argues that the juvenile court abused its discretion in choosing wardship over dependency. He concludes that had he been adjudicated a dependent, he and his family would have received desperately needed services, thus ensuring that his, and society's, interests would be served. To be sure, the record discusses at length the difficulties defendant's mother has had with substance abuse, maintaining a stable home, and meeting defendant's educational and support needs. We do not doubt the seriousness of these long-standing problems or that they have had a profound effect on defendant.[8] Nevertheless, substantial evidence supports the juvenile court's decision in selecting wardship over dependency as the system that would better serve defendant's interests.

In less than a year, defendant had engaged in repeated serious criminal conduct. Within six months of admitting to felony battery and being released from Solano Juvenile Hall on probation, defendant possessed a loaded .40 caliber, semiautomatic handgun, which was a violation of not only the law, but also an apparent violation of his previously imposed probation conditions. Defendant's criminal behavior plainly posed a danger to himself as well as others. (See § 202, subd. (a) [the purpose of the juvenile court law is "to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court"].) Defendant admitted to smoking marijuana with

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[7] Even if we were to determine that the assumption and characterization made by Child Welfare were erroneous, any error was harmless. When an assessment report is challenged as inadequate, " 'the reviewing court evaluates any deficiencies in the report in view of the totality of the evidence in the appellate record.' " (*In re M.V.*, *supra*, 225 Cal.App.4th at p. 1511, quoting *In re Michael G.* (2012) 203 Cal.App.4th 580, 591.) Thus, in *In re M.V.*, the court rejected a defendant ward's argument that the joint assessment report failed to adequately address several topics. It held that "since the vast majority of the evidence that the minor complains was lacking in the section 241.1 assessment was before the court from other sources, any technical deficiencies in the assessment were harmless." (*Ibid.*)

[8] As part of the disposition in this case, the juvenile court ordered defendant's parents to attend family counseling pursuant to section 727, subdivision (c).

friends "a few times per month," including two weeks before the instant arrest. Both defendant and his mother stated that defendant had found it difficult to stay out of trouble because he was associating with individuals who were exerting a "bad influence" on him. This observation is supported by the fact that, at the time he was arrested, defendant was in the company of three adult males in a car that contained marijuana and a loaded handgun (in addition to the one possessed by defendant). Finally, the juvenile court was understandably concerned with defendant's ability to "play one family member off against another," as the Joint Assessment Report noted that defendant was able to thwart attempts by adult family members to enforce rules or hold him accountable for his actions by simply "leaving and going to his mother or another family member's home."

In light of the nature of defendant's criminal conduct, his continued substance abuse, and his problematic social and familial relationships, the juvenile court did not abuse its discretion in determining that defendant's interests would be best served by the delinquency system. (See *In re M.V.*, *supra*, 225 Cal.App.4th at p. 1513 ["We read this statute . . . as granting broad discretion to the juvenile court when determining which status will best meet a particular minor's needs."])

C. *Modification of Defendant's Probation Condition*

Defendant's final argument is that the probation condition which requires him to "maintain acceptable grades, behavior and attendance" at school is unconstitutionally vague. Defendant contends that the requirement that he "maintain acceptable grades" is too imprecise and speculative to give notice of what it requires, and "maintain[ing]. . . acceptable behavior" gives no notice as to what constitutes acceptability. We agree and will modify the condition.

The Attorney General argues that defendant has forfeited his challenge to the probation condition, but otherwise does not object to modification. Although defendant did not object to these conditions before the juvenile court, we disagree that appellant has forfeited his challenge. This claim may be made for the first time on appeal if the probation condition is "capable of correction without reference to the particular sentencing record developed in the trial court," presenting "a pure question of law, easily

remediable on appeal by modification of the condition." (*In re Sheena K.* (2007) 40 Cal.4th 875, 887-888.)

"[T]he underpinning of a vagueness challenge is the due process concept of 'fair warning.' (*People v. Castenada* (2000) 23 Cal.4th 743, 751.) . . . [¶] A probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,' if it is to withstand a challenge on the grounds of vagueness. (*People v. Reinertson* (1986) 178 Cal.App.3d 320, 324-325.)" (*In re Sheena K., supra*, 40 Cal.4th at p. 890.)

We agree that requiring defendant to maintain "acceptable grades [and] behavior" while at school is not sufficiently precise for defendant to know what is required of him. (*In re Angel J.* (1992) 9 Cal.App.4th 1096, 1102 [resolving the constitutional vagueness issue in requiring defendant to maintain " 'satisfactory grades' " by defining the term to mean "passing grades in each graded subject"].) Modifying the probation condition to clarify that "acceptable grades" means passing grades and acceptable "behavior" means compliance with school rules gives defendant notice of what is required of him and provides an objective criteria against which his performance can be assessed. The Attorney General does not object to these modifications. Accordingly, this condition of probation is modified to say defendant must "attend school regularly, maintain acceptable attendance and passing grades in each graded subject, and obey school rules."

DISPOSITION

The matter is remanded to the juvenile court with directions to modify the written order setting forth the challenged probation condition to read: "The minor shall attend school regularly, maintain acceptable attendance and passing grades in each graded subject, and obey school rules."

In all other respects, the judgment is affirmed.

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Miller, J.

We concur:

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Kline, P.J.

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Richman, J.